IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 1584 OF 1996

VIJAY SANTOSH NIKAM ... PETITIONER.

VS.

SARCHITNITHIS, NASIK

DIST.MARATHA VIDHYA PRASAR

SAMAJ AND ORS. ... RESPONDENTS.

A.V.BUKHARI AND UMESH NABAR WITH BV.V.BULLHARE FOR THE PETITIONERS.

K.Y.MANDLIK FOR RESPONDENTNO. 1 TO 3.

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CORAM : A.P. DESHPANDE, J.

DATE : January 23, 2007.

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JUDGMENT

1. The present petitioner is the original appellant before the Presiding Officer of School Tribunal, Nasik. By filing an Appeal before the School Tribunal, appellant has questioned the correctness and legality of the Order of termination, terminating the appellant from service, with effect from 2.5.1989, so also an action on the part of the Respondent NO.1 in discontinuing the service of the appellant, with effect from 20.2.1992, is challenged as amounting to

termination.

2. Few facts, that are relevant to decide the question involved in this petition are narrated herein below :-

> That the Respondent NO.1 is a Society, which administers and manages very many secondary schools. The Petitioner herein was appointed initially as an assistant teacher, with effect from 1.1.1987 as a Part-time teacher, temporarily, till the end of the Academic Session 1987-88. It is the case of the petitioner that though the Order of appointment mentions the appointment to be as a Part-time teacher, he was made to work as full timer. After the end of academic session 1987-88. The appellant was appointed by appointment order, dated 1.1.1987 for one academic session and the Order of appointment, terms the said Order as an Order, appointing the appellant-temporarily. In a similar fashion, the appellant was continued in service for academic session 1988-89, yet again, on temporary basis and at the end of academic session 1988-89, by a written Order, the petitioner was terminated from service with effect from 2.5.1989.

3. It does appear that when the petitioner was terminated with effect from 2.5.1989, he had accepted that termination and did not challenge the same. Subsequent thereto, when the work was available in academic Session 1991-92, the petitioner was appointed as part-time teacher, temporarily with effect from 19.12.1991 till 30th April 1992, without any demur and without questioning the validity of the termination, effected in the year 1989, the Petitioner accepted the said appointment which came to end by efflux of time on 30.4.1992. It is the case of the petitioner that he actually worked up to 22nd September, 1992. Be that as it may, the petitioner challenged the termination Order viz. the one came into force on 2.5.1989 and also the purported termination with effect from 22nd September, 1992.

4. The petitioner had moved an application, seeking condonation of delay, as the appeal was filed after the expiry of period of limitation. The Tribunal has dealt with the issue of condonation of the delay, while deciding the appeal itself, vide the impugned Judgment and Order passed by it. On appreciation of evidence and material on record, the tribunal has concluded that the appellant was not continued in service after 30th April, 1992, when his time bound

appointment for part of academic session 1991-92 came to an end by efflux of time. The Tribunal has neither condoned the delay nor has it found any merit in the appeal filed by the respondent and, hence, dismissed the same by the impugned Judgment and Order dated 5.7.1995.

5. In the above facts situation, the learned Counsel for the Petitioner has contended that the Tribunal was not right in deferring the consideration of the application for condonation of the delay and rejecting the same while deciding the main appeal, vide the impugned Judgment and Order. It is next contended that the appointment of the petitioner with effect from 1.1.1987, until the termination effected on 2.5.1989 need to be taken as continuous service as the said appointment, in the submission of the learned Counsel for the appellant-petitioner, was against a clear vacancy and in a permanent post. It is also then contended that the termination effected from 2.5.1989 is illegal and the appellant need to be notionally considered as in continuous service till he was terminated in the year 1992.

6. Per contra, the learned Counsel appearing for the respondent has submitted that as the petitioner did not challenge the termination from service with effect

from 2.5.1989, the petitioner is estopped from contending that the service rendered by him till that date, need to be counted for the purpose of determining the legality or validity of the termination effected with effect from 30.4.1992. In the submission of the learned Counsel for the respondent-Management, failure on the part of the petitioner to question the legality and validity of the written order of termination, which took effect from 2.5.1989, would estopped the petitioner from questioning the legality thereof. Moreso, in view of the subsequent event, whereby the petitioner-appellant accepted appointment as assistant teacher, as a part timer, as a temporary appointee, without any demur. The learned Counsel submits that the acceptance of part time appointment in December, 1991 by the Petitioner, without questioning the legality or validity of the termination, effected on 2.5.1989, would result in waiver of the rights by the petitioner to question the legality of the termination, effected from 2.5.1989.

7. It is undisputed that though the petitioner has worked from 1.1.1987 up to 2.5.1989, the order of appointment refers the said appointment as purely temporary. Assuming for the sake of arguments, as contended by the learned Counsel for the petitioner, that the appointment of the appellant-petitioner during

the said period being on a permanent post and on a clear vacancy, the same need to be construed as an appointment under Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,1977 and hence the appellant has accrued a right qua the post, there is absolutely no justification as to why the said termination was not questioned immediately thereafter and how come the petitioner proceeded to accept temporary appointment at a much latter point of time i.e. from December, 1991 up to the end of academic session 1991-92. The Tribunal rightly held that the failure on the part of the appellant - petitioner to question the termination, effected from 2.5.1989 and his conduct in accepting the part time temporary appointment from December, 1991 to April, 1992 would estop the petitioner from questioning the legality and validity of the termination, effected from 2.5.1989.

8. True it is, there may be some justification for the delay caused after termination of service in the year 1992, in filing appeal and said delay could have been condoned, but there is absolutely no justification to condone the delay for questioning the legality and validity of the Order of termination, which resulted in cessation of the relationship of employer and employee with effect from 2.5.1989. Obviously, the last

appointment came to an end on 30th April, 1992, which was temporary appointment, as a part timer for a short span of about four months and that, by itself, does not cloth the petitioner with any legal right whatsoever. If this be the position, then the petitioner cannot be permitted to question the legality and validity of termination effected from 2.5.1989 and no right is created in the petitioner-alppellant on account of temporary part time service, from December, 1991 to 30th April 1992. No fault can be found with the Order passed by the Tribunal in dismissing the appeal filed by the petitioner.

9. Perused the Order passed by the Tribunal. It does not suffer from any illegality or infirmity or impropriety, except for the fact that the Tribunal ought to have decided the application preferred for condonation of delay at the threshhold , instead of keeping it pending and belatedly dealing with the same, while deciding the Appeal on merit. The Tribunal should have decided the application filed by the appelant-petitioner seeking condonation of the delay at the threshold, instead of making the parties to litigate for years together.

10. Be as it may, in the fats and circumstances of the present case, the Order passed by the Tribunal does

not require any interference. There being no merit in the petition, the same stands dismissed with no order as to costs. Rule discharged.

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[A.P.DESHPANDE, J.]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.1584 OF 1996

DATE OF DECISION : Januarya 23, 2007.

For approval and signature :

The Hon'ble Mr. Justice A.P.Deshpande.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether Their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Office?